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DAVID GORDON OPPENHEIMER

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID GORDON OPPENHEIMER,
an individual,

Plaintiff,

vs.

LIVE NATION ENTERTAINMENT,
INC., a Delaware corporation

Defendant.

Case No.

**COMPLAINT FOR COPYRIGHT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

Plaintiff, David Gordon Oppenheimer (“Oppenheimer” or “Plaintiff”), for his complaint against Defendant, Live Nation Entertainment, Inc. (“Defendant” or “Defendants”), alleges:

THE PARTIES

1. Plaintiff is a citizen of North Carolina engaged in the business of professional photography and resides in and has a principal place of business in Asheville, Buncombe County, North Carolina.

2. Live Nation Entertainment, Inc. is a corporation organized and existing under the laws of the State of Delaware, qualified to do business in California, and with principal offices located in Los Angeles, California. AC Entertainment, LLC

1 was the owner of the Bonaroo Festival and the party to first infringe Plaintiff's
2 copyright by displaying one or more of the Works, as defined hereafter. Plaintiff is
3 informed and believes, and thereon alleges that Defendant Live Nation
4 Entertainment, Inc. purchased all the assets of AC Entertainment in or about 2020
5 (the latter entity having been dissolved), and therefore said Defendant is liable for
6 all the conduct alleged herein.

7 **INTRODUCTORY FACTS**

8 3. Oppenheimer is a professional photographer, and is the author
9 (photographer) of the aerial photographic images of the Bonnaroo Music Festival in
10 Tennessee ("Photographs"), and at all times relevant to this claim, has been and is
11 now the sole owner and proprietor of all right, title and interest in and to the
12 copyright in said images at issue in this matter (the "Works" **Exhibit 1**).

13 4. Oppenheimer makes his photographic Work available for perusal and
14 licensing online at his website <http://performanceimpressions.com>.

15 5. Plaintiff has complied in all respects with Title 17, U.S.C. § 102, *et seq.*,
16 and all other laws governing federal copyright applicable to the Work and registered
17 the copyrights with the Register of Copyrights at the U.S. Copyright Office.
18 Attached hereto as **Exhibit 2** is a true and correct copy of the certificate of
19 registration and the deposit photographs for the registration certificate, covering the
20 subject photographs, bearing U.S. Copyright Registration No. VAu 1-133-970
21 effective June 19, 2013.

22 6. At all relevant times hereto, Plaintiff has and continues to be the sole
23 owner of all rights, titles, and interests in and to the aforementioned registration and
24 photographic Works. Plaintiff's copyright in the above-described Work is presently
25 valid and subsisting, was valid and subsisting from the moment of the Works'
26 creation, and all conditions precedent to the filing of this suit have occurred.

27 7. For many years, it has been Plaintiff's custom and business practice to
28 display his copyright management information ("CMI") on his copyrighted

1 photographs when they are first published or publicly displayed by him, and
2 thereafter. When published or displayed by Plaintiff, the Work at issue in this case
3 prominently displayed the CMI in the caption, with a facial watermark, and/or
4 embedded in the metadata of the Work. Thus, Defendants were on notice that the
5 Work was copyright protected, and they were provided identifying material and
6 means for contacting Plaintiff to obtain a license.

7 8. Plaintiff is informed and believes and thereon alleges that all times
8 relevant hereto, each of the Defendants, named or to be named, was the agent,
9 affiliate, officer, director, manager, principal, partner, joint venturer, alter-ego and/or
10 employee of the remaining Defendants and was at all times acting within the scope
11 of such agency, affiliate, officer, director, manager, principal, partner, joint venturer,
12 alter-ego and/or employment relationship and actively participated in, or
13 subsequently ratified and adopted, or both, each and all of the acts or conduct alleged
14 herein, with full knowledge of all the facts and circumstances, including, but not
15 limited to, full knowledge of each and all of the violations of Plaintiff's rights and
16 the damages to Plaintiff proximately caused thereby.

17 9. Within three (3) years of filing suit, one or more of the Defendants, or
18 someone at their direction, infringed his copyrights by distributing, displaying and/or
19 publishing (or directing others to do so) the Works on the website,
20 www.acentertainment.com for the purpose of advertising and marketing
21 Defendants' entertainment offerings.

22 10. The Works were displayed by Defendants on (at least) the following
23 URLs:

24 <http://acentertainment.com/category/festivals/>

25 <https://acentertainment.com/opportunities/>

26 [http://acentertainment.com/wp-](http://acentertainment.com/wp-content/uploads/2016/01/bonnaroo_news.jpg)
27 [content/uploads/2016/01/bonnaroo_news.jpg](http://acentertainment.com/wp-content/uploads/2016/01/bonnaroo_news.jpg)

28 [https://acentertainment.com/wp-](https://acentertainment.com/wp-content/uploads/2016/03/whatwedo_website.jpg)
[content/uploads/2016/03/whatwedo_website.jpg](https://acentertainment.com/wp-content/uploads/2016/03/whatwedo_website.jpg)

1 Images of Defendants' website where the infringing images were displayed are
2 attached hereto as Exhibit 3.

3 11. Plaintiff's attorney sent a formal letter identifying the infringing URLs
4 demanding Defendant cease and desist from their ongoing infringement, and seeking
5 information about the uses to which the Work had been put, etc

6 12. Through several other attempted communications with Defendant, it
7 became clear that Defendant was uninterested in in avoiding litigation through a
8 negotiated settlement, and so this suit was filed.
9

10 **CAUSES OF ACTION**

11 **COUNT I – NON-WILLFUL COPYRIGHT INFRINGEMENT**

12
13 13. Plaintiff re-alleges and incorporates paragraphs 1 – 12 above as if
14 recited *verbatim*.

15
16 14. Defendants have non-willfully infringed Plaintiff's copyrights in and
17 to the Works shown on **Exhibit 1** by scanning, copying, reproducing, distributing,
18 displaying, publishing and/or otherwise using, unauthorized copies of said Works
19 within the United States in violation of the Copyright Act in Title 17.
20

21 15. Upon information and belief, Defendants have benefitted from
22 infringements of the Works, while Plaintiff has suffered and will continue to suffer
23 monetary damages, irreparable injury to his business, reputation, and goodwill, and
24 dilution in the marketplace; therefore, Plaintiff is entitled to injunctive relief,
25 damages, and other relief set forth in the Title 17.

26 **COUNT II – RECKLESS/WILLFUL COPYRIGHT INFRINGEMENT**

27 16. Plaintiff re-alleges and incorporates paragraphs 1 – 15 above as if
28 recited *verbatim*.

1 17. Alternatively, Defendants have recklessly/willfully infringed
2 Plaintiff's copyrights in and to the Works shown on **Exhibit 1** by scanning, copying,
3 reproducing, distributing, publishing, displaying and/or otherwise using,
4 unauthorized copies of said Works.

5 18. As is his pattern and practice, Oppenheimer had clearly marked copies
6 of the Works with his CMI on the face of the Works, in legible captions adjacent to
7 the Works where published or displayed, and embedded as metadata within the
8 Works. Oppenheimer's facial CMI consists of visible and legible watermarks and
9 are displayed on the face of the works on each copy that he publishes; CMI in the
10 metadata includes notices of copyright, a declaration stating "All Rights Reserved,"
11 and usage licensing instructions in addition to Oppenheimer's address, phone
12 number, email, and the Performance Impressions website URL; and CMI in adjacent
13 captions contain additional notices of copyright. Plaintiff does this to distinguish his
14 works from the works of others in his field, to provide a way for potential licensees
15 to contact him for purchasing licenses, as well as to ensure that anyone who merely
16 views his Works appreciates that he owns all rights and title in them.

17 19. Upon information and belief, one or more of the Defendants, or a third
18 party acting on their behalf, saw Plaintiff's copyright notice on the face of the images
19 prior to scraping it from the World Wide Web, and uploading it to the website.
20 Further, one or more of the Defendants, or someone on their behalf, removed or
21 cropped out Plaintiff's copyright notice from the face of the Work before uploading
22 and publishing, displaying, or distributing it. Therefore, because they had the
23 opportunity to appreciate that Plaintiff was the sole author and owner of the Works,
24 and still used them without license or authorization, Defendants recklessly/willfully
25 infringed the Work.

26 20. Upon information and belief, one or more of the Defendants have
27 benefitted from their infringements of the Works, while Plaintiff has suffered and
28 will continue to suffer monetary damages, irreparable injury to his business,

1 reputation, and goodwill, and dilution in the marketplace; therefor, Plaintiff is
 2 entitled to injunctive relief, damages (including disgorgement of Defendants'
 3 profits), and other relief set forth in the Act.

4 **COUNT III – VIOLATIONS OF DIGITAL MILLENNIUM**
 5 **COPYRIGHT ACT**

6 21. Plaintiff re-alleges and incorporates paragraphs 1 – 20 above as if
 7 recited *verbatim*.

8 22. As is his pattern and practice, Oppenheimer had clearly marked the
 9 Work with his CMI on the face of the Work, in legible captions adjacent to the Work
 10 where published, and embedded as metadata within the Work as alleged above.
 11 Oppenheimer does this to distinguish and identify his works from the works of others
 12 in his field, to provide a way for potential licensees to contact him for purchasing
 13 licenses, as well as to ensure that anyone who merely views his Work appreciates
 14 that he owns all rights and title in them from legible facial watermarks, notices of
 15 copyright in captions adjacent to the Work where published, and from the metadata
 16 within the Work.

17 23. In accomplishing the infringements identified above, and upon
 18 information and belief, one or more of the Defendants, or a third party at their behest,
 19 intentionally removed or cropped out the facial CMI, including Plaintiff's name.

20 24. Upon information and belief, one or more of the Defendants distributed
 21 copies and/or derivatives of the Works knowing that such CMI had been removed
 22 or altered, all without authorization.

23 25. At the time that the CMI was removed or altered from the Plaintiff's
 24 Works, and at the time the Works were published, displayed, or distributed having
 25 had the CMI removed or altered, Defendants knew or had reasonable grounds to
 26 know that such behavior would induce, enable, facilitate, and/or conceal
 27 infringements of Plaintiff's copyright.

28 26. Plaintiff is entitled to and seeks recovery of statutory damages from

1 Defendants not less than \$2,500, and not exceeding \$25,000 for each act committed
2 in violation of his rights under 17 U.S.C. § 1203(c)(3)(B).

3 27. Pursuant to 17 U.S.C. § 1203(b)(5), Plaintiff is entitled to recover, and
4 therefore seeks the recovery of his Lodestar costs, including reasonable attorney's
5 fees.

6 28. As a result of Defendant's above-described acts of copyright
7 infringement, Plaintiff has sustained actual damages or entitlement to Defendants'
8 profits in an amount not yet ascertained, but which discovery will illuminate. Such
9 entitlements include, but are not limited to, lost profits and/or lost licensing revenue,
10 disgorgement of the infringers' profits attributable to their infringements, statutory
11 damages including for the DMCA violations; and attorneys' fees and costs.

12 **RELIEF REQUESTED**

13 1. That Defendants, their agents, employees and/or servants be enjoined
14 *pendente lite* and permanently from infringing Plaintiff's copyrights in any manner
15 whatsoever, and from publishing through any visual media, and from selling,
16 marketing or otherwise distributing the Work, and from using it in marketing or
17 advertising;

18 2. That Defendants be required to deliver up, under oath, for impounding
19 during the pendency of this action, and for destruction thereafter, all copies of the
20 Works that infringe Plaintiff's copyrights, and all prints, film negatives, magnetic
21 tapes, digitally scanned and/or stored images, and all other articles by means of
22 which such infringing copies may be reproduced, which are in the possession or
23 under the direct or indirect control of Infringers;

24 3. That Defendants provide an accounting of all gains, profits and
25 advantages derived by him as a result of the willful and unlawful acts of copyright
26 infringement above-described;

27 4. That Defendants be ordered to pay over to Plaintiff his actual damages
28 sustained, in addition to all their profits attributable to the infringements, and which

1 are not taken into account in computing Plaintiff's actual damages incurred as a result
2 of Defendant's copyright infringements described herein, pursuant to 17 U.S.C. §
3 504(b);

4 5. In the alternative, and at Plaintiff's election, that Defendants be ordered
5 to pay maximum statutory damages in the amount \$150,000 for the Work infringed
6 pursuant to 17 U.S.C. § 504(c), or such other amount as the jury may deem
7 appropriate;

8 6. That in addition to the above, Defendants be ordered to pay over to
9 Plaintiff actual damages for each DMCA violation, plus all of Defendants' profits
10 that are attributable to each such violation – which are not taken into account in
11 computing Plaintiff's actual damages – pursuant to 17 U.S.C. § 1203(c)(2);

12 7. That alternative to actual damages under the DMCA, and at Plaintiff's
13 election, Defendants be: 1) ordered to pay to Plaintiff the maximum statutory
14 damages pursuant to 17 U.S.C. § 1203(c)(3)(B) for each violation; and 2)
15 permanently enjoined and prohibited from employing, altering, cropping, mutilating
16 or otherwise utilizing Plaintiff's copyrighted images or their copyright management
17 information in any manner or media whatsoever, pursuant to 17 U.S.C. § 1203(b)(1);

18 8. That Defendants be ordered to pay to Plaintiff all of his Lodestar costs
19 including reasonable attorney's fees pursuant to 17 U.S.C. § 504(c) and §505 and 17
20 U.S.C. §1203(b)(5); and

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1 9. That Plaintiff recover judgment for such other and further relief as this
2 court deems just and proper, including maximum pre- and post-judgment interest on
3 all sums due.

4
5 Dated: November 2, 2023 LAW OFFICES OF LAWRENCE G. TOWNSEND

6
7 s/Lawrence G. Townsend
8 Lawrence G. Townsend
9 Attorney for Plaintiff
 DAVID OPPENHEIMER

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff demands a jury trial for all claims as provided for in Rule 38 of the
12 Federal Rules of Civil Procedure.

13
14 Dated: November 2, 2023 LAW OFFICES OF LAWRENCE G. TOWNSEND

15
16 s/Lawrence G. Townsend
17 Lawrence G. Townsend
18 Attorney for Plaintiff
19 DAVID OPPENHEIMER